IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

O.P.No.9753 of 1999(J)

PETITIONER:-

THE SOUGH INDIAN BANK LIMITED,
HEAD OFFICE, MISSION QUARTERS, TRICHUR - 680 001,
REPRESENTED BY ITS GENERAL MANAGER (ADMN.)
SRI.JOSEPH J.VIDAYATHIL.

BY ADV. SRI.M.PATHROSE MATHAI (SR.)
SRI.SAJI VARGHESE

RESPONDENTS:-

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1. THE INDUSTRIAL TRIBUNAL, PALAKKAD.

2. E.I.INASU, ELAVANTHINGAL HOUSE,
ANJANGADI P.O., TRICHUR - 680 001.

3. GOVERNMENT OF INDIA,
REPRESENTED BY ITS SECRETARY TO MINISTRY OF LABOUR,
SHRAM BHAVAN, NEW DELHI.

R2 BY ADV.SRI.P.RAMAKRISHNAN
R3 BY ADV. SRI.K.R.RAGHUNATH, ADDL.CGSC
ADV. SRI.S.R.AJITH, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

ORDER ON C.M.P.NO.16053 OF 1999 IN O.P.NO.9753 OF 1999-J

DISMISSED.

7/2/2007. Sd/- ANTONY DOMINIC, JUDGE.

ORDER ON C.M.P.NO.49545 OF 1999 IN O.P.NO.9753 OF 1999-J

CLOSED.

7/2/2007. Sd/- ANTONY DOMINIC, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF THE AWARD DATED 1.2.1999 PASSED BY THE 1ST RESPONDENT IN I.D.NO.70 OF 1996-C.

EXT.P2 - TRUE COPY OF THE RELEVANT CLAUSE OF SETTLEMENT DATED 19.10.1966.

EXT.P3 - TRUE COPY OF THE RELEVANT PAGE OF THE PAY ROLL OF THE RESPONDENT BANK FOR THE MONTH OF FEBRUARY 1992.

RESPONDENT'S EXHIBITS:- NIL.

- TRUE COPY -

Antony Dominic,J.

O.P.No.9753 of 1999-J

Dated, this the 7th day of February, 2007

JUDGMENT

The South Indian Bank has filed this writ petition seeking to quash Exhibit P1 award rendered by the Industrial Tribunal, Palakkad in I.D.No.70 of 1996. The issue referred for adjudication was:

> "Whether the action of the management of South Indian Bank, Trichur is justified in dismissing Sri.E.I.Inasu, Daftary with effect from 18.9.92? If not, to what relief the concerned workman is entitled to?".

Before the Tribunal, the validity of the enquiry was examined as a preliminary issue. The Tribunal held that the enquiry was held in compliance with the principles of natural justice and after making reference to the evidence that was adduced in the enquiry, the Tribunal also upheld the findings of the Enquiry Officer.

2. After, thus, upholding the validity of the enquiry, the Tribunal proceeded to consider the question regarding the proportionality of the punishment of dismissal imposed on the

workman. It is stated in the award that the allegations that were proved against the workman were that he came to the work place on 12.2.1992, although he was not on duty and misbehaved in an indecent and disorderly manner towards his superior at a time when he was under the influence of alcohol. It was found that he abused his superior, although he had no personal animosity towards him. On examining the gravity of the misconduct thus proved against the workman, the Tribunal, after making reference to two judgments of the Supreme Court, held that the punishment of dismissal passed against the workman was disproportionate to the gravity of misconduct. It is held that the workman deserved to be given an opportunity to reform himself. On that basis, the Tribunal modified the punishment and directed re-employment of the workman in service without backwages, but with continuity of service from the date of dismissal. It was also ordered that on re-employment, his pay and allowances shall be fixed taking into account his service prior to the date of dismissal. It is challenging this award, the management has filed this writ petition.

3. The learned counsel for the petitioner would argue that after upholding the validity of the enquiry and the finding of

the enquiry officer of the gross misconduct committed by the workman, the Tribunal was not justified in interfering with the punishment. On the other hand, the learned counsel for the 2nd respondent-workman would contend that in the facts and circumstances of the case, the Tribunal was justified in interfering with the punishment as mentioned above and according to him, Section 11-A of the Industrial Disputes Act empowered the Tribunal to do so.

4. On an anxious consideration of the facts and circumstances of the case, I am inclined to accept the contention of the learned counsel for the petitioner. It is a case where the 2nd respondent, an employee of the Bank, came to the work place on 12.2.1992 when he was not on duty and that too under the influence of alcohol. He is proved to have committed the misconduct of drunkenness or riotous or disorderly or indecent behaviour on the premises of the Bank and misbehaved towards his superior officer. The fact that this is a gross misconduct as defined as per Exhibit P2 settlement is also beyond any dispute. The Tribunal after having held that the misconduct committed by the workman has been proved, ought not have, in my view, interfered with the punishment. In any establishment, particularly

in an establishment like a commercial Bank, discipline should be maintained and in a matter where a workman has misconducted himself as in this case, the Tribunal should have kept its hand off in the matter of punishment. The Honourable Supreme Court has repeatedly held that in such cases power of the Industrial Tribunal under Section 11-A of the Industrial Disputes Act ought not to be invoked to interfere with the punishments imposed by the Management. Reference in this connection may be made to the decision in the case of **Mahindra and Mahindra Ltd.** v. **N.B.Narawade** ([2005] 3 SCC 134) and **M.P.Electricity Board** v. **Jagdish Chandra Sharma** ([2005) 3 SCC 401). For the aforesaid reasons, I hold that the Tribunal acted illegally in interfering with the punishment imposed on the 2nd respondent-workman. I, therefore, set aside Exhibit P1 award to the extent the punishment of dismissal is interfered with. The writ petition is allowed. No costs.

Antony Dominic
Judge

vku/-